

Bulletin No. 75-1

ADMINISTRATIVE FEES

(Reference: Sections 41-402, 41-403, 41-1323 and 41-1803, Idaho Code)

March 7, 1975

It has come to the attention of the Director of the Department of Insurance, State of Idaho, that Sections 41-402 and 41-403, *Idaho Code*, (Premium Tax) and 41-1323, *Idaho Code*, (Illegal Dealing in Premiums — Excess Charges for Insurance) have not been, and are not now being fully complied with. This Bulletin is to inform those persons and entities who may now be in violation of Sections 41-402 and 41-1323, *Idaho Code*, that the Director of the Department of Insurance interprets the term "premium" to include the administrative fees charged by group administrators, and that the Director intends to enforce the following provisions relating to premiums, premium taxes and illegal dealing in premiums:

"Idaho Code Section 41-1803. Premium Defined. — 'Premium' is the consideration for insurance by whatever name called. Any 'assessment' or any 'membership', 'policy', 'survey', 'inspection', 'service', or similar fee or other charge in consideration for an insurance contract is deemed part of the premium."

"Idaho Code Section 41-1323. Illegal Dealing in Premiums — Excess Charges for Insurance.—

(2) No person shall wilfully collect as premium or charge for insurance any sum in excess of the premium or charge applicable to such insurance, *and as specified in the policy*, in accordance with the applicable classifications and rates as filed with and approved by the commissioner (director); or, in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums, and charges shall not be in excess of those specified in the policy and as fixed by the insurer " (Emphasis and Parenthesis Added).

"Idaho Code Section 41-402. Premium Tax.—

(1) Each authorized insurer and each formerly authorized insurer with respect to insurance transacted while an authorized insurer shall file with the director ... each year a

IDAHO INSURANCE DEPARTMENT BULLETINS

statement (on forms as prescribed and furnished by the director) under oath showing the amount of all *gross premiums* received by the insurer on direct risks written in this state, and also, if a domestic insurer, on direct risks situated in any other state or states in which the insurer is not licensed and upon which no premium tax is otherwise paid or payable... , and pay the director a tax at the rate set forth in subsection (2) below. . . ”

The Director of Insurance is of the opinion that administrators perform a valuable service, but nevertheless feels it has become necessary to advise that administrative charges are part of the “premium” or consideration for insurance as defined in *Idaho Code* Section 41-1803 and, therefore, the charge must be *specified in the policy* as required by *Idaho Code* Section 41-1323(2), and corresponding premium taxes paid as required under Sections 41-402 and 41-403, *Idaho Code*. Any charge for administrative fees which are not specified in the policy shall be deemed a violation of *Idaho Code* Section 41-1323.

The Director recognizes the valuable function that administrators perform in the collection of premiums and the payment of claims and does not wish to discourage this practice. However, the Director also recognizes that administrators are not subject to regulation under the *Idaho Insurance Code*, unless they are also licensed as agents, brokers, consultants, etc., whereas insurers are subject to regulation. The Director, therefore, is of the opinion that the intent behind the *Insurance Code* is to place ultimate responsibility for the collection of premiums and payment of claims upon the corresponding insurers which are duly authorized under their Certificates of Authority to transact insurance in this state.

The Staff of the Department of Insurance has instructions to investigate and commence appropriate action against any insurer or other licensees hereafter found to be in contravention of the *Idaho Code* as explained and interpreted herein.

Monroe C. Gollaher
DIRECTOR OF INSURANCE